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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,633	11/07/2001	Clemente Conde	EASY:021	9243

7590

10/03/2003

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EXAMINER
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ALIMENTI, SUSAN C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

10/039,633

Applicant(s)

CONDE, CLEMENTE

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bradley et al. (US 5,456,045).

Bradley et al. (Bradley hereafter) discloses the claimed invention as cited in claims 1-3 and 6-8. Bradley discloses a lawn-edging strip, as seen in Figure 1, comprising a flexible body 10 with flaps 24, 26 on either end, and each flap either comprises a tongue connector 98 or a pocket connector 106. The locking feature is defined as slot 104 cooperating with top surface 44. In operation tongue 102 is received in slot 104 of an adjacent edging strip and is restricted in that position in the horizontal direction (with respect to ground level) and similarly in the vertical direction as top surface 44 prevents upward movement once tongue 102 is in place. With regard to claim 2, the tongue 102 is guided into the locked position by vertically lining up the tongue 102 with the notch 104. The curved feature of the top edge of the notch 104 further assists the locking mechanism.

Regarding claim 6, Bradley shows in Figure 14 the versatility of the device as it further comprises a second tongue 126 that allows for the strip to be shortened and yet still capable of connecting properly to another strip. This function is further described in column 6, lines 1-9.

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Regarding claim 7 the tongue connector 106 and the pocket connector 98 are oriented such that they are mated for alignment in a direction perpendicular to a length of the edging strip. With regard to claim 8, the bottom edge 20 of Bradley's device is configured so to allow forced insertion of the bottom edge into the ground, and the top edge 18 is constructed to withstand a hammering force necessary for insertion.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-3, 7-15 and 17-19 are rejected under 35 U.S.C. 102(a) as being anticipated by Mistubishi Plastics Ind. Ltd (JP 200300071 A).

Mistubishi Plastics Ind. Ltd (hereinafter Mitsubishi) discloses a lawn edging strip, as best viewed in Figures 6, 7, 11 and 14, adapted for insertion into the ground comprising a tongue connector 17 and a pocket connector 18, each located at a respective end of the lawn edging strip. In operation the slot feature of the pocket connector receives the tongue connector 17 into the notch of an adjacent lawn edging strip. The tongue connector is slid into place in a direction perpendicular to the longitudinal axis of the lawn edging strip, and is then locked into place in the horizontal and vertical directions. The bottom edge of the lawn edging strip is configured to be inserted into the ground, and is considered to be capable of attaching a lawn edging strip to one that has already been inserted in the ground.

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The method of claims 10-15 and 17-19 is considered inherent given the structure as discussed above.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradley as applied to claims 1-3 and 6-8 above, and further in view of Smith et al. (US 5,720,128).

Bradley discloses the claimed invention except the form of the notch is slightly different in structure. Bradley's device comprises a guide feature as the top edge of notch 104 is curved down and toward the interior of the notch and the tongue connector 102 and notch are generally rectangular in shape, however it does not comprise a lip at the end of this curve or guide feature, and the notch is not sized slightly smaller than the width of the tongue connector 102. Smith et al. discloses a lawn-edging strip in the same field of endeavor that has a notch structure 32 teaching the use of a lip 50 (See Examiner's reference characters in Figure 4) and a narrowing 51 of the notch to a width smaller than the mating tongue connector 30. Once the tongue connector 30 is fitted inside the notch 32, the connection becomes locked in the direction parallel axis of alignment, as well as the axis perpendicular to the axis of alignment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bradley's locking feature by incorporating Smith et al.'s notch structure in order to provide a more secure

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connection, preventing movement of the tongue connector in two axis of movement instead of one.

7. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsubishi.

Mitsubishi, as discussed above, discloses the claimed invention except the guide feature does not comprise a generally curved surface extending from a top surface to the midpoint of the notch. It would have been obvious to one having ordinary skill in the art to change the shape of the notch in the pocket connector 18, while still facilitating the same function of guiding the tongue connector into the locking position, since it has been held that there is no invention in merely changing the shape or form of an article with out changing its function except in a design patent. Eskimo Pie Corp. v. Levous et al., 3 USPQ 23

8. Claims 6 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsubishi in view of Bradley et al.(US 5,456,045).

Mitsubishi discloses the claimed apparatus and method except an optional end section is not provided within the flexible body to allow for selectively varying the length thereof. Bradley discloses a lawn-edging device, as seen in Figures 14 and 15, in the same field of endeavor that teaches the use of additional and optional end connectors formed within the length of the flexible body that provide the user with more length options. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide optional end locations in order to allow for length adjustability.

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***Response to Arguments***

9. Applicant's arguments with respect to claim 1-10 have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 703-306-0360.

The examiner can normally be reached on Monday-Thursday, 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

SCA

*Charles T. Jordan*  
CHARLES T. JORDAN  
SUPERVISOR  
TECHNICAL SERVICES SECTION